

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Long	Team: Team # 3	CCRB Case #: 200100569	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 01/27/2001 9:00 PM	Location of Incident: 140 St & Broadway	18 Mo. SOL 7/27/2002	Precinct: 30
Date/Time CV Reported Sun, 01/28/2001 9:41 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Sun, 01/28/2001 9:41 PM

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Osvaldo Nunez	6330	918086	030 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Demarco	19007	917521	030 PCT
2. SGT Gerald Ferguson	5151	903127	030 PCT
3. POM Josh Ulan	12983	902516	030 PCT
4. POM Frank Galan	17933	906294	030 PCT
5. CPT Robert Lenahan	00000	876590	PBMN
6. SGT Alex Martinez	05512	886019	030 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Osvaldo Nunez	Abuse of Authority: PO Osvaldo Nunez stopped and questioned § 87(2)(b)	A . § 87(2)(g)
B . POM Osvaldo Nunez	Force: PO Osvaldo Nunez struck § 87(2)(b) with a radio.	B . § 87(2)(g)
C . POM Osvaldo Nunez	Abuse of Authority: PO Osvaldo Nunez strip-searched § 87(2)(b)	C . § 87(2)(g)
D . POM Osvaldo Nunez	Abuse of Authority: Osvaldo Nunez threatened § 87(2)(b) with the use of force.	D . § 87(2)(g)
E . POM Osvaldo Nunez	Other: PO Osvaldo Nunez intentionally made a false official statement when he stated that he did not strike § 87(2)(b) with a radio.	E . § 87(2)(g)

### Synopsis

On January 27, 2001, § 87(2)(b) was standing on 140<sup>th</sup> Street and Broadway in Manhattan, when he began to run from the scene after observing police officers. At this time, PO Osvaldo Nunez gave chase and apprehended § 87(2)(b). § 87(2)(b) sustained injury to his head, from being struck with PO Nunez's radio. § 87(2)(b) was arrested, searched and placed in the officers' vehicle at which time he was threatened with the use of force. § 87(2)(b) was issued a § 87(2)(a) 160.50 summons and then released.

§ 87(2)(g)

### Summary of Complaint

§ 87(2)(b) was interviewed by Victim Services at § 87(2)(b) on § 87(2)(b), when he went to the Hospital for medical treatment (see enc. 8A-D). He was interviewed by CCRB on February 2, 2001 (see enc. 10A-B), regarding a complaint that was generated when § 87(2)(b) went to the 7<sup>th</sup> precinct on January 28, 2001. § 87(2)(b), § 87(2)(g)

On January 27, 2001, § 87(2)(b) was walking around uptown Manhattan, at approximately 8:00 PM. § 87(2)(b) had a fight with his wife, § 87(2)(b) and decided to go for a walk. He took the F train to 42<sup>nd</sup> Street and then took the 5 to 125<sup>th</sup> Street. § 87(2)(b) stated that he got off at 125<sup>th</sup> Street because he did not want to ride the train any longer. There was nothing that prompted him to get off of the train. § 87(2)(b) and his wife reside together in the Lower East Side, in Manhattan. § 87(2)(b) walked to a store on the corner of Broadway and 140<sup>th</sup> Street and bought potato chips. He stood outside the store eating the potato chips. There were approximately thirty other people on the corner, all of whom were male Hispanics.

As § 87(2)(b) stood on the corner, a green four-door car pulled up to the scene. The passenger of the vehicle, later identified as PO Ulan, and an officer who was in the back seat, later identified as PO Nunez, exited the car and yelled, "Freeze." The officers then ran toward the crowd. § 87(2)(b) and about five or six other males ran from the officers. § 87(2)(b) stated that he ran § 87(2)(b). § 87(2)(b) stated that he also ran because he did not have any identification with him.

§ 87(2)(b) ran approximately half a block before the officers caught up with him. When he realized that he was going to get caught, and that he had no reason to run, he stopped and put his hands in the air. PO Nunez placed his left arm around § 87(2)(b)'s stomach area and then struck him approximately six times in the back of the head with a radio that was in his right hand. PO Nunez had § 87(2)(b) in a bear hug and tackled him to the ground. § 87(2)(b) was lying face down on the ground and PO Nunez was on top of him. PO Nunez put § 87(2)(b)'s left arm behind his back and placed it in handcuffs. PO Nunez continued to strike § 87(2)(b) in the back of the head with the radio. PO Ulan approached and put § 87(2)(b)'s right arm in handcuffs. § 87(2)(b) willingly put his hands behind his back; he did not resist the officers. As PO Ulan grabbed § 87(2)(b)'s right arm to lift him off the ground, PO Nunez struck § 87(2)(b) in the left side of his head and in the front of his head with the radio. § 87(2)(b) yelled, "What the hell are you doing?" § 87(2)(b) estimated that he was struck twelve times in total.

An officer later identified as PO Galan, arrived on the scene in the green car. He saw § 87(2)(b) bleeding and stated, "What the hell is going on?" He also said that he did not want anything to do with the situation.

§ 87(2)(b) was brought to the car. PO Nunez frisked § 87(2)(b) then pulled down his pants, and the officers looked at him with a flashlight. § 87(2)(b) was then placed in the officers' vehicle. § 87(2)(b) was asked for identification but he stated that he did not have any I.D. on him. The officers asked him, "Where is it? Where's the stuff? We know you threw the stuff." An officer stated that they saw § 87(2)(b) in the area everyday, and § 87(2)(b) stated that they had him confused with someone else because he lived downtown. § 87(2)(b) told the officers that they made a mistake and asked the officers to wipe his face off and let him go. § 87(2)(b) stated that he would forget the whole thing. PO Nunez said, "Shut up. I didn't hit you. Who hit you? Who hit you?" § 87(2)(b) said "You did, you know you did." PO Nunez responded, "You keep saying this, I'm going to really punch you in your mouth." PO Galan stated that they could not let him go because the last time he let someone go the person filed a lawsuit. Again, § 87(2)(b) asked to be let go and said that he ran, got the bumps and would now forget about it. He said that if he were arrested, he would file a lawsuit. Another officer was called over the radio and asked to respond to the scene.

An officer later identified as Sgt. Ferguson, responded to the scene, and PO Nunez and PO Ulan went over to the car to speak with him.

§ 87(2)(b) was taken to the 30<sup>th</sup> precinct, and when he arrived EMS was waiting for him. Once at the stationhouse, the Emergency Medical Technicians cleaned § 87(2)(b)'s wounds. § 87(2)(b) refused to go to the Hospital because he did not want to go with the police officers. The officers verified § 87(2)(b)'s identity by calling his sister, § 87(2)(b), and he was issued a summons § 87(2)(a) 160.50. § 87(2)(b) told the desk Sergeant who was later identified as Sgt. Martinez, "Your officers used excessive force." § 87(2)(b) was released and he went to § 87(2)(b) § 87(2)(b) where he received surgical glue stitches.

The summons that § 87(2)(b) received [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

A follow-up interview was conducted with § 87(2)(b) on December 26, 2001. At this time, § 87(2)(b) was shown single photographs marked one through five – PO Galan, PO Nunez, Sgt. Ferguson, PO Ulan and PO DeMarco. § 87(2)(b) picked out PO#2, PO Nunez, as the officer who grabbed him and hit him in the head with the police radio (see enc. 10F-K).

§ 87(2)(b) stated that when he was arrested he had close-cropped hair. § 87(2)(b) shaved his head after going to § 87(2)(b) but before going to file a complaint at the precinct.

When § 87(2)(b) was asked to recount how he sustained each of his injuries, he provided the following account – § 87(2)(b) stated that PO Nunez jumped on him knocking them both to the ground. PO Nunez initially struck § 87(2)(b) in the back of the head (the crown of his head). PO Nunez continued to strike § 87(2)(b) with the radio. PO Nunez worked his way around § 87(2)(b)'s head, and then turned § 87(2)(b) around while on the ground and struck him in the forehead. § 87(2)(b) stated that at no time did he hit his head on the ground. § 87(2)(b) asked "What's all this for?" and PO Nunez responded, "You know why. You made me run after you."

§ 87(2)(b) stated that a Captain never interviewed him while at the precinct, but there was a Captain present. The Captain was standing behind the front desk and only looked at § 87(2)(b)'s injuries. He stated that he did not tell a Captain, or the Emergency Medical Technicians that he had fallen. § 87(2)(b) said that he told one of the EMTs what had occurred.

§ 87(2)(b) has a lawsuit pending for five million dollars (see notice of claim, enc. 31A-C) for "severe personal and emotional injuries."

Photographs of § 87(2)(b)'s injuries were taken by § 87(2)(b) Victims' Services (see enc. 9). In these two Polaroids, § 87(2)(b) had close-cropped hair. There is a visible injury to his forehead, one to his left temple, and one on the upper left side of his head, near the crown. Photographs were also taken of § 87(2)(b) by his wife, § 87(2)(b) § 87(2)(b) on January 28, 2001 (see enc. 10D-E) and by the 7<sup>th</sup> precinct when § 87(2)(b)

§ 87(2)(b) filed his CCRB complaint (see enc. 6A-B). In these pictures, § 87(2)(b) had shaved his head, and injuries are evident on the back of § 87(2)(b)'s head, as well as the crown of his head, and the left side of his head.

In a telephone conversation with § 87(2)(b) § 87(2)(b) on January 23, 2002 (see enc. 33G), she confirmed to the Investigator, that she and § 87(2)(b) had an argument on the date of this incident, at their residence. § 87(2)(b) left the apartment, and when he returned he had bandages on his head. § 87(2)(b) and § 87(2)(b) then proceeded to § 87(2)(b).

### **Results of Investigation**

#### *Emergency Medical Technicians*

EMT § 87(2)(b) § 87(2)(b) and EMT § 87(2)(b) § 87(2)(b) were interviewed at the CCRB on January 14, 2002 (see enc. 11A-C, 12A-C). § 87(2)(b) had no recollection of responding to the 30<sup>th</sup> precinct to attend to § 87(2)(b) § 87(2)(b) stated that on January 27, 2001, he and § 87(2)(b) were called to the 30<sup>th</sup> precinct to respond to an injury. When they arrived at the precinct, § 87(2)(b) and § 87(2)(b) were directed to a room and an officer pointed out § 87(2)(b). § 87(2)(b) was in a room with six to ten handcuffed individuals.

§ 87(2)(b) asked § 87(2)(b) his name as well as questions such as where he was, to determine § 87(2)(b)'s state of mind because he had a head injury. § 87(2)(b) did not recall talking to any officer in particular, but he stated that a few officers conveyed that they had just come from an arrest of a group of people. The individuals in the room had all been at a known drug location, and were arrested for possession of drugs. Most of the people in custody had either resisted arrest or gave chase. From § 87(2)(b)'s understanding, § 87(2)(b) was arrested with a group of other people.

§ 87(2)(b) complained of a cut that he had received to his forehead, between his eyes. There was also a cut over his left eye, and one three to four inches above his left ear. § 87(2)(b) did not observe any other injuries although he had inspected the back of § 87(2)(b)'s head. § 87(2)(b) also palpated § 87(2)(b)'s head. He stated that the back of § 87(2)(b)'s head was "unremarkable," and he did not observe any blood.

When § 87(2)(b) asked § 87(2)(b) how he sustained his injuries, § 87(2)(b) replied that he had fallen. § 87(2)(b) asked how § 87(2)(b) had fallen, and he replied that he just fell down. He did not say what caused him to fall. § 87(2)(b) did not state to § 87(2)(b) that officers had used force or excessive force against him.

#### *Canvass*

On February 7, 2001, a fieldtrip was conducted to 140<sup>th</sup> Street and Broadway in an effort to locate any possible witnesses. The Investigator spoke with males loitering in the vicinity, employees of § 87(2)(b) § 87(2)(b), and employees of § 87(2)(b) located at the corner of 140<sup>th</sup> Street and Broadway, all with negative results. § 87(2)(g)

Canvass letters were also posted in the surrounding area, to which the Investigator has received no reply.

#### *Officer Identification*

PO Osvaldo Nunez was identified from the summons issued to § 87(2)(b) PO Michael DeMarco and Sgt. Gerald Ferguson were identified on the Civilian Complaint Report filed at the precinct. Capt. Robert Lenahan and PO Josh Ulan were identified from PO DeMarco and Sgt. Ferguson's CCRB statements. PO Frank Galan was identified through PO Ulan's CCRB statements. Sgt. Alex Martinez was identified from roll call.

#### *Arrests*

A BADS search revealed that PO Nunez, PO Ulan and PO Galan did not make any other arrests on January 27, 2001. There would have been no other prisoners present when § 87(2)(b)'s arrest was affected. Once at the precinct, § 87(2)(b) was never placed in a holding cell. While § 87(2)(b) stated that § 87(2)(b) was sitting with other handcuffed individuals, the command log indicates that the prisoners brought

in directly before § 87(2)(b) had been released with summonses at 9:35 PM, and § 87(2)(b) was not brought in until 9:45 PM.

*Sgt. Gerald Ferguson and PO Michael DeMarco*

Sgt. Ferguson and PO DeMarco were interviewed at the CCRB on February 27, 2001 (see enc. 14A-B, 16A-B). On January 27, 2001, Sgt. Ferguson and PO DeMarco were working an anti-crime detail when they received a radio call at 9:35 PM, from PO Nunez and PO Ulan requesting that a supervisor respond to 140<sup>th</sup> Street and Broadway to verify the arrest of an injured prisoner. When Sgt. Ferguson and PO DeMarco responded to the scene, they remained in their vehicle.

PO Ulan exited the vehicle and informed Sgt. Ferguson that he and PO Nunez had a prisoner, § 87(2)(b) in their vehicle who was under arrest § 87(2)(a) 160.50. PO Ulan told Sgt. Ferguson that § 87(2)(b) had a cut to his head, was bleeding, and needed medical attention. PO Ulan told Sgt. Ferguson that § 87(2)(b) had been acting suspiciously and when the officers approached him and asked for identification, § 87(2)(b) ran. § 87(2)(b) had been running up the street causing public annoyance and alarm while impeding vehicular traffic. PO Ulan stated that when § 87(2)(b) was brought down to the ground, he received injury to his head. Sgt. Ferguson requested that an ambulance respond to the stationhouse.

Sgt. Ferguson and PO DeMarco then proceeded to West 148<sup>th</sup> Street and St. Nicholas Avenue in order to notify Capt. Lenahan of an injured prisoner. Sgt. Ferguson stated that this is standard procedure. When Sgt. Ferguson and PO DeMarco returned to the stationhouse, PO DeMarco took meal. PO DeMarco did not see § 87(2)(b). Sgt. Ferguson observed that § 87(2)(b) had two small cuts on his forehead, which were bleeding. EMS arrived at the location at which time § 87(2)(b) refused medical aid.

Sgt. Ferguson and Capt. Lenahan interviewed § 87(2)(b) about what had happened. § 87(2)(b) stated that the officers did not do anything wrong, and his injuries were sustained when he fell to the ground while being apprehended after he was chased. Sgt. Ferguson was not aware if PO Nunez and PO Ulan were present when § 87(2)(b) was questioned.

*PO Josh Ulan, PO Osvaldo Nunez, and PO Frank Galan*

PO Ulan was interviewed at the CCRB on March 22, 2001 (see enc. 18A-B). PO Nunez was interviewed at the CCRB on March 28, 2001 (see enc. 20A-B). PO Galan was interviewed at the CCRB on April 12, 2001 (see enc. 22A-B). On January 27, 2001, PO Ulan, PO Nunez, and PO Galan were working anti-crime in the confines of the 30<sup>th</sup> precinct. They were assigned to an unmarked blue vehicle of which PO Galan was the driver. PO Ulan was the passenger of the vehicle and PO Nunez was in the backseat. They basically corroborated the following account:

According to PO Ulan, while the officers were on patrol, an officer brought his attention to § 87(2)(b). He did not recall which officers brought his attention to § 87(2)(b) or why he was considered suspicious. § 87(2)(b) was standing alone near a playground, on the south side of 141<sup>st</sup> Street between Broadway and Hamilton Place. PO Ulan believed that § 87(2)(b) was either putting something in his pocket or waistband. PO Ulan exited the vehicle and approached § 87(2)(b) in order to question him about what he was doing. PO Galan stated that he observed § 87(2)(b) adjusting his waistband, and believed that he could be in possession of a weapon. PO Nunez stated that PO Ulan wanted to speak with § 87(2)(b) but he did not know why.

PO Ulan exited the vehicle, and identified himself as a police officer and § 87(2)(b) started to run from the scene. PO Ulan chased § 87(2)(b) on foot while PO Nunez and PO Galan followed § 87(2)(b) in the police car. § 87(2)(b) ran one block to Broadway and PO Nunez then exited the car and began to chase § 87(2)(b) on foot along with PO Ulan. PO Galan continued to follow the officers in the car. § 87(2)(b) ran northbound on Broadway in the lanes of traffic. During this time, PO Ulan and PO Nunez were identifying themselves as police officers and told § 87(2)(b) to stop running. Between 141<sup>st</sup> and 142<sup>nd</sup> Street § 87(2)(b) crossed over and began running in the southbound lanes of Broadway. When § 87(2)(b) was between 140<sup>th</sup> and 141<sup>st</sup> Street he jumped up on the median that separates Broadway and began running on that. PO Ulan stated that in hindsight, it is possible that § 87(2)(b) injured his head by hitting

it against the tree branches while running on the divider. PO Nunez had passed PO Ulan and was closer to § 87(2)(b). § 87(2)(b) ran toward 140<sup>th</sup> Street and Hamilton Place with PO Nunez behind him and PO Ulan behind PO Nunez.

PO Nunez stated that § 87(2)(b) turned the corner of 140<sup>th</sup> Street causing PO Nunez to momentarily lose sight of him. When PO Nunez turned the corner, he caught up to § 87(2)(b) and then grabbed § 87(2)(b) by the back of his jacket. PO Nunez was still running when he grabbed § 87(2)(b) and their feet got tangled causing both individuals to fall to the ground. PO Nunez got up from the ground and PO Ulan arrived at the location. When PO Ulan turned the corner, § 87(2)(b) was lying face down on the ground. PO Ulan did not witness how PO Nunez stopped § 87(2)(b). PO Nunez, PO Galan, and PO Ulan all stated that § 87(2)(b) resisted arrest by not giving his hands to the officers. PO Ulan handcuffed § 87(2)(b) by using the force necessary to bring § 87(2)(b)'s hands behind his back, and PO Galan arrived on the scene by car while § 87(2)(b) was in the process of being handcuffed. PO Ulan and PO Nunez stated that PO Ulan searched § 87(2)(b) by frisking him and going through his pockets; § 87(2)(b) was not strip-searched and his pants were not pulled down. PO Galan stated that PO Nunez searched § 87(2)(b). No contraband was found on § 87(2)(b).

PO Nunez stated that he did not strike § 87(2)(b) with a radio, and PO Ulan and PO Galan stated that PO Nunez did not strike § 87(2)(b) with a radio. PO Nunez, PO Ulan and PO Galan all indicated that PO Nunez did not have his radio out while chasing § 87(2)(b) or when he was apprehended.

PO Ulan backtracked § 87(2)(b)'s steps to see if he dropped anything, but PO Ulan found nothing.

§ 87(2)(b) was placed in the police officers' vehicle. PO Ulan observed that § 87(2)(b) had a small cut in the center of his forehead, and another small cut on the side of his head. PO Galan and PO Nunez saw a cut to § 87(2)(b)'s forehead and noticed that he was bleeding. PO Ulan assumed that § 87(2)(b) had hit his head on the ground. PO Nunez said that § 87(2)(b) was taken down near a gate and raised concrete, and assumed that § 87(2)(b) had hit his head on the gate or the concrete. However, PO Nunez never observed § 87(2)(b)'s head strike the pavement. § 87(2)(b) told the officers that he ran because he did not have identification and he did not want to get arrested for not having ID. PO Nunez did not state to § 87(2)(b), "I didn't hit you. Who hit you? You keep saying this and I'm really going to punch you in your mouth."

Sgt. Ferguson was called to the scene to verify the arrest. After Sgt. Ferguson responded to the location, § 87(2)(b) was transported to the stationhouse to be interviewed by Capt. Lenahan and be treated by EMS. PO Ulan stated that while at the stationhouse, he and PO Galan might have been joking around about having previously been sued by a defendant, but he did not recall what was said. § 87(2)(b) did not tell anyone at the precinct that the officers had used excessive force against him.

The officers were shown pictures taken by § 87(2)(b) (see enc. 10D-E) detailing § 87(2)(b)'s injuries. PO Ulan, PO Nunez and PO Galan did not recall seeing any of the lacerations on the back of § 87(2)(b)'s head or the cut on § 87(2)(b)'s nose. They were unaware of how § 87(2)(b) sustained these injuries.

#### *Captain Robert Lenahan*

Capt. Lenahan was interviewed at the CCRB on June 1, 2001 (see enc. 23A-B). On January 27, 2001, Captain Lenahan was at the scene of a fatal car accident when Sgt. Ferguson responded to the location and informed the Captain that there was an injured prisoner at the 30<sup>th</sup> precinct from an anti-crime arrest. Sgt. Ferguson stated that the prisoner had run and fallen. Sgt. Ferguson also stated that he had gone to the scene and verified the arrest. Captain Lenahan responded to the command and observed § 87(2)(b) sitting in the muster room with PO Nunez, PO Galan and PO Ulan. The Captain saw a cut on § 87(2)(b)'s head.

Captain Lenahan entered the muster room and asked the officers to step outside. He then interviewed § 87(2)(b) regarding what had occurred. There were no other officers present. § 87(2)(b) informed the Captain that he was standing on a corner when he saw the police. As the officers approached § 87(2)(b) he became scared because he did not have any identification on him. § 87(2)(b) ran from the officers, tripped, fell and cut his head. Captain Lenahan asked § 87(2)(b) if the officers had caused him injury in

any way and § 87(2)(b) said no. § 87(2)(b) made no allegations of force being used against him and he did not state that PO Nunez had struck him with a radio. Captain Lenahan stated that during his interaction with § 87(2)(b) it appeared that he did not want to be at the precinct and wanted to be released.

Captain Lenahan was shown pictures of § 87(2)(b)'s injuries taken at the 7<sup>th</sup> precinct. Captain Lenahan stated that he did not recall seeing the injuries on the back of § 87(2)(b)'s head and only observed the injury to his forehead. Captain Lenahan stated that it is standard procedure for him to interview any injured prisoners and it is standard procedure for him to be notified of any injured prisoners.

#### *Sgt. Alex Martinez*

Sgt. Martinez was interviewed at the CCRB on June 18, 2001 (see enc. 24A-B). On January 27, 2001, Sgt. Martinez was the desk Sergeant at the 30<sup>th</sup> precinct when PO Nunez brought § 87(2)(b) into the precinct. Sgt. Martinez observed that § 87(2)(b) had a slight cut to his upper forehead and asked him if he needed any medical attention. § 87(2)(b) stated that he was okay and did not want medical attention. § 87(2)(b) did not make any allegations of excessive force to Sgt. Martinez. At no point did Sgt. Martinez have any conversation with the officers involved or with § 87(2)(b) regarding how he sustained his injuries.

Captain Lenahan, who happened to be at the stationhouse at this time, interviewed § 87(2)(b) in the muster room regarding what had occurred. EMS was also called to the scene. Sgt. Martinez described § 87(2)(b) as calm but stated that he believed that § 87(2)(b) just wanted to leave the command.

Sgt. Martinez was shown photographs of § 87(2)(b) that were taken at the 7<sup>th</sup> precinct. Sgt. Martinez stated that he did not observe the injuries to the back of § 87(2)(b)'s head and he only saw the laceration to his forehead.

#### *Ambulance Call Report*

The ACR (see enc. 25A-B) states that § 87(2)(b) had a half-inch laceration to the middle of his forehead and a half-inch laceration to his left temple. § 87(2)(b) was bleeding, but it was controlled with direct pressure. § 87(2)(b) denied blurred vision, loss of consciousness, and pain to his head, neck or back.

#### *Medical Records*

§ 87(2)(b) went to § 87(2)(b) at § 87(2)(b) (see enc. 26A-D). The medical records state that § 87(2)(b) sustained lacerations to his left temple and his mid forehead, as well as abrasions to his head. These injuries diagrammed by the attending physician (see enc. 26C) show that there are bruises on the back of § 87(2)(b)'s head. The physician's notes state that § 87(2)(b) was struck several times with a blunt object. The Nursing Department referred § 87(2)(b) to Victims' Services at § 87(2)(b) where he was interviewed by social worker § 87(2)(b) (see enc. 8A-D).

§ 87(2)(b)'s injuries were documented through photographs at several different times. Two photographs of § 87(2)(b) were taken by Victims' Services at § 87(2)(b) (see enc. 9) in the early morning of § 87(2)(b). On January 28, 2001, § 87(2)(b) took photographs of § 87(2)(b) (see enc. 10D, 10E), and photographs were also taken of him on this date when he filed a Civilian Complaint at the 7<sup>th</sup> precinct (see enc. 6A, 6B). The photographs of § 87(2)(b)'s injuries are consistent with one another, and consistent with the force he stated was used against him.

On August 1, 2001, the Investigator spoke with § 87(2)(b) via telephone (see enc. 33E). § 87(2)(b) was the attending physician in the Emergency Room at § 87(2)(b) on the night that § 87(2)(b) was treated. § 87(2)(b) stated that the injuries that § 87(2)(b) sustained would be consistent with being struck with a blunt object.

#### *Police Records*

The command log (see enc. 28) states that Captain Lenahan interviewed § 87(2)(b) about his injuries. § 87(2)(b) informed the Captain that he sustained his injuries from falling, and he did not make any allegations of unnecessary force.

§ 87(2)(b) s Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### Officers' CCRB Histories

PO Nunez has no substantiated CCRB cases.

#### Credibility

§ 87(2)(b), § 87(2)(g)

Also, § 87(2)(b) stated that the officers were talking about past lawsuits, and PO Ulan verified this. Furthermore, § 87(2)(b) was able to identify PO Nunez from photographs almost a year after the incident. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that he was just taking a walk uptown after having gotten into an argument with his wife. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

PO Ulan said that § 87(2)(b) could have sustained his injuries from hitting his head against the tree branches as he ran on top of the divider on Broadway. § 87(2)(b), § 87(2)(g)

The officers stated that § 87(2)(b) was taken down by a gate and raised cement. § 87(2)(b), § 87(2)(g)

Also, after § 87(2)(b) shaved his head there was visible bruising in the back of his head as well as to the crown of his head. § 87(2)(b), § 87(2)(g)

#### Conclusions and Recommendations

**Allegation A: PO Osvaldo Nunez forcibly stopped and questioned § 87(2)(b) (PG 212-11).**  
PO Galan stated that he observed § 87(2)(b) adjusting his waistband and believed that § 87(2)(b) could have a weapon. PO Ulan stated that he believed § 87(2)(b) was either putting something in his pocket or waistband. § 87(2)(b), § 87(2)(g)



According to Kamins' *Search and Seizure* (see enc. 1A), in order for an officer to forcibly stop an individual the officer, "must have reasonable suspicion that the person is committing, has committed, or is about to commit a crime." Reasonable suspicion can be defined as the "quantum of knowledge sufficient to induce an ordinarily prudent and cautious man under the circumstances to believe criminal activity is at hand." A number of factors can contribute to reasonable suspicion. For example, Kamins' states (see enc. 1B) that "a police officer has a reasonable suspicion based in part, on the defendant's furtive or suspicious behavior." PO Galan and PO Ulan stated that § 87(2)(b) was adjusting his waistband, § 87(2)(g) § 87(2)(b). Also, when the officers approached § 87(2)(b) he fled the scene. Kamins' indicates (see enc. 1C),

"Where the police approach a citizen to make a common law inquiry and the citizen takes flight immediately upon their approach, a pursuit will be justified. The pursuit is proper because the flight of the individual has escalated the predicate for the encounter; the officer now has reasonable suspicion that the individual has engaged in criminal suspicion."

§ 87(2)(b), § 87(2)(g)

**Allegation B: PO Osvaldo Nunez struck § 87(2)(b) with a radio (PG 203-11).**

§ 87(2)(b) stated that when he was apprehended, PO Nunez struck him repeatedly about the head with a radio. § 87(2)(b) initially indicated at his first CCRB interview, that PO Nunez struck him in the back of the head with the radio, tackled him to the ground, and then after he was handcuffed, struck § 87(2)(b) in the side of his head, as well as his forehead. In § 87(2)(b)'s follow-up CCRB interview, he stated that PO Nunez jumped on him, knocking them both to the ground. PO Nunez then struck § 87(2)(b) in the back of his head, near the crown. PO Nunez continued to strike § 87(2)(b) with the radio, working his way around § 87(2)(b)'s head. PO Nunez denied striking § 87(2)(b) with the radio. He stated that § 87(2)(b) was taken down by a fence and raised concrete, and assumed that this was how § 87(2)(b) would have sustained his injuries, although he did not witness § 87(2)(b) hit his head. PO Ulan stated that § 87(2)(b) could have injured himself by striking his head on tree branches while fleeing the police, or possibly from hitting his head on the ground. PO Galan was unaware of how § 87(2)(b) sustained his injuries.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) sustained both bruises and lacerations to the front of his head, the left side of his head, the crown and the back of his head. The lacerations and bruises were circular in nature (see photographs, enc. 6A-B, 10D-E). § 87(2)(b), § 87(2)(g)

Also, § 87(2)(b) suffered injury to the back of his head and the crown of his head, consistent with those on the side of his head and his forehead. § 87(2)(b), § 87(2)(g)

The medical records indicate that § 87(2)(b) was struck with a blunt object, and § 87(2)(b) the supervising Emergency Room physician stated that § 87(2)(b)'s injuries are consistent with being struck by a blunt object.

Pictures were taken of § 87(2)(b) at § 87(2)(b) and these pictures show § 87(2)(b) before he shaved his head, and the injuries to § 87(2)(b)'s left temple, and left crown are visible. While § 87(2)(b) had hair when he went to § 87(2)(b) and had not yet shaved his head to take photographs of his injuries, the medical records still indicate that there were injuries (bruises) to the back of § 87(2)(b)'s head.

According to PG 203-11 (see enc. 2), "only that amount of force necessary to overcome resistance will be used to affect an arrest." § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

**Allegation C: PO Osvaldo Nunez strip-searched § 87(2)(b) (PG 208-05).**

While PO Nunez and PO Ulan stated that it was PO Ulan that searched § 87(2)(b), § 87(2)(b) and PO Galan indicated that it was PO Nunez that searched him. While all the officers denied that § 87(2)(b) was strip-searched, § 87(2)(b) asserted that PO Nunez searched him by pulling down his pants. § 87(2)(g)

**Allegation D: PO Osvaldo Nunez threatened § 87(2)(b) with the use of force (PG 203-11).**

§ 87(2)(b) stated that when he was placed in the officers' vehicle, PO Nunez stated to him, "Shut up. I didn't hit you. Who hit you? Who hit you...You keep saying this, I'm really going to punch you in your mouth." PO Nunez denied making this statement, and PO Ulan and PO Galan said that PO Nunez did not threaten § 87(2)(b) with the use of force. § 87(2)(g)

**Allegation E: PO Osvaldo Nunez intentionally made a false official statement when he stated that he did not strike § 87(2)(b) with a radio (PG 203-08).**

§ 87(2)(g)

PO Nunez stated that he did not strike § 87(2)(b) with his radio. Yet, PO Nunez could offer no explanation as to how § 87(2)(b) sustained his injuries. PO Nunez stated that § 87(2)(b) may have hit his head on the ground but he did not witness this. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: